2016
Decisions of the Attorney General
Open Records

The following are brief summaries of Open Records Decisions made by the Office of the Kentucky Attorney General. Decisions that are appealed to the Kentucky courts are captured in the regular case law summaries provided by this agency. Unless appealed, these Decisions carry the force of law in Kentucky and are binding on public agencies. A copy of the applicable Kentucky Revised Statutes can be found at the end of the summary. It is possible that one or more of these Decisions are being appealed; these cases will be reflected in the Quarterly Case Law Updates of this agency.

Note that some Decisions do not directly involve a public safety agency, but are included due to the principles discussed and their likely applicability in the future to such agencies.

For a full copy of any of the opinions summarized below, please visit http://ag.ky.gov/civil/orom/.

16-ORD-003 **In re: Dock Sellers, Jr./Oldham County Police Department**
Decided January 12, 2016

Sellers requested a number of specific items related to a particular motor vehicle accident in which his daughter was a party. He received no response and appealed. Oldham County responded that it had been overlooked as it was exactly the same request that it had received from another party. The clerk indicated certain items, notes held by responding officers, did not exist. The clerk provided narrative responses to the remainder of the request, which was for information, rather than documents. Although the response was untimely, the clerk did apparently determine that certain requested items did not exist, which was proper. (The Decision indicated it would assume, in the absence of evidence that notes did exist, that a proper search was made for them and they were determined not to exist.) It also noted that the clerk went beyond what was required by "providing narrative responses to a series of questions that constituted requests for information rather than requests for records." In doing this, the "the department's response went above and beyond the call of its statutory duty."

16-ORD-010 **In re: April DeFalco/City of Falmouth**
Decided January 15, 2016

DeFalco requested items that constituted almost entirely of "lists" of information about the Falmouth Police Department, including but not limited to information about officers, certification dates, training dates, accreditation, take home cars and mileage to home. The City denied the request, denying that for the most part, there was any responsive documents and in

one case, indicating the process was ongoing (accreditation). DeFalco appealed. The City responded that the one item it did have, the accreditation, was underway and would be available by the end of the year (2015). The Decision agreed that the city's initial response was untimely, but that its ultimate response was proper, as it was not required to respond to requests for information, rather than documents. It was, however, required to direct the requestor to, and produce documents that reflected the information requested, to allow the requestor to compile their own list, and clearly, there were documents that reflected the requested data. The City was not, however, required to produce documents on a process that was incomplete, although of course, a second request could be made once the documents were ready.

16-ORD-012 In re: Robert D. Cron/Butler County Sheriff
Decided February 2, 2016

Cron requested records related to disbursements from the Sheriff's drug seizure fund for six months in 2015. The County Attorney responded that the records were available for review at the office. Cron inspected the records, which were unredacted. He asked for copies and what he received were redacted of signatures and account numbers, without explanation. He also noted that the pagination indicated some items were completely withheld. He asked for a response but got no real explanation, and appealed. The Sheriff indicated that the redactions were done to "prevent possible hacking" if the information fell into the wrong hands. He also did not address any missing records. The Decision noted that the "right to both onsite inspections and receiving copies are limited by the exemptions found in KRS 61.878." Even though the Sheriff could have redacted the records when inspected on site, that does not estop him from denying unredacted records in the future. Further, the Decision agreed that a public agency's bank account number is exempt from disclosure, pursuant to prior decisions, to protect the public monies from theft. However, the Decision found no legitimate reason to redact actual signatures, since the signature of the Sheriff, of course, occurs on any number of public documents easily accessible to the public. With respect to the alleged missing records, the Decision noted that since the Sheriff denies any knowledge of missing records, it cannot make any determination on that issue, although the Sheriff should respond to the request either way.

16-ORD-017 In re: Kevin Wheatley/Department of Agriculture
Decided February 5, 2016

Wheatley requested certain records related to timesheets and work logs created by a named employees. The former was provided but the responder indicated there was no other documentation, as the employee's supervisor had passed away and there was nothing responsive on his assigned laptop, and nothing appeared to have been kept as hard copy files. The employee's computer had been stolen, as well. As such, the agency had nothing to provide. The requestor appealed, arguing that another source had indicated that hard copies of the records had been left when another employee departed the agency. (The reporter had also requested any records destruction certificates that might apply.) The Decision noted that "If the

Department has, for whatever reason, placed some of its records in the hands of a third party, that does not put the records outside the reach of the Open Records Act." In addition, if the public agency lost or improperly destroyed records which it should have, that would create a records management issue. Further, "an agency's "inefficiency in its own internal record keeping system" should not be allowed "to thwart an otherwise proper open records request." Com. v. Chestnut, 250 S.W.3d 655 (Ky. 2008). The matter was referred to the Kentucky Department of Libraries and Archives for inquiry as to any recordkeeping errors the agency might have.

16-ORD-017 In re: Reverend Russell/City of West Buechel
Decided February 5, 2016

Reverend Russell, of the National Investigative Report, requested documents relating to a monetary loan made to the police chief of the city, as well as the expenses of the city as well. Although the city responded in a timely manner, its response was deficient in that it failed to provide him with "access to all existing responsive documents within that period of time or cite the applicable statutory exception(s) and explain how it applied to any records being withheld." The only explanation for delay given was that the documents were in the possession of the Auditor's Office, which was subsequently refuted. The responses also lacked the required specificity and the particular and detailed information" necessary.

In one instance, the City failed to produce a record (a cancelled check) which it should have produced, and which was found later by a different means. Further the inability to produce records that should exists indicates a record management issue.

16-ORD-019 In re: Lawrence Trageser/City of Taylorsville
Decided February 5, 2016

Trageser requested records for the City of Taylorsville Police Department, to include cell phones used by two specific officers. He was promptly notified that the records were available for review, but that they did not include itemized phone calls. The City indicated they would request that information from the provider and hoped to have the records by a specific date. The City supplemented its response noting that the City's landline phone provider did not provide such detail in its records, and that information for one of the two cell phones was non-existent because the phone had not actually been in use during that time. The Decision agreed that the City was under no obligation to have such itemized records and found its response proper under the circumstances.

16-ORD-034 In re: Cincinnati Enquirer/Ludlow Police Department
Decided March 7, 2016

The Cincinnati Enquirer requested all records related to an officer-involved shooting, including security video and body camera video, and officer's personnel records and the incident report. LPD responded with some personnel records, redacting only personal information. It did not

respond with any other records. In followup to the appeal, LPD noted that the investigation of the shooting was being handled by the Kentucky State Police and it had no responsive records on that issue. It did not, however, specifically provide information as to the custodian of the records, in this case the Commonwealth's Attorney and the KSP.
The Decision noted that "while it may not be the best records management practices for an originating agency to turn over all copies of its records to another public agency as part of an investigation," it was not a violation of the ORA. To the extent that they did not possess the records, they could not release the records.

16-ORD-035 In re: Jeff King/Kentucky State Police
Decided March 9, 2016

King, an inmate, requested copies of the investigative file on the crimes for which he was imprisoned, a juvenile sexual assault. KSP denied the audio recording provided by the juvenile victim, noting that it was impossible to redact the victim's information as it was the victim's own statements. It also denied records from the DCBS, finding those to be confidential under KRS 17.150(4), and the CPS records were confidential under KRS 620.050. Upon appeal, the OAG agreed that there was little public interest in the victim's recorded statement, and that it, and the other two items protested, were properly denied.

16-ORD-044 In re: Anthony C. Clyburn/Jeffersontown Police Department
Decided March 21, 2016

Clyburn requested personnel records and related documents related to a named police detective. He was contacted the following day by the records custodian, as well as the chief, who told him the matter was being referred to the City Attorney. He did not receive a written response until he appealed, however. Upon appeal, the City responded that the material was being requested as part of an ongoing vendetta the requestor had with the detective, and that he had been pursuing criminal charges unsuccessfully connected to the matter, and intended to write a book. The Decision noted his motivation was irrelevant and that although the records may be embarrassing, that did not make them nondisclosable. Although the JPD could make specific redactions, and provide justifications for each, it could not give a blanket denial, and the matter was one of legitimate public interest.

16-ORD-049 In re: Lawrence Trageser/City of Taylorsville
Decided March 28, 2016

Trageser requested police reports relating to a particular address, on a particular date. The city's response was that it appeared to be a duplicate of an earlier request, and that it had already provided to only releasable record. As such, it denied the request as "unreasonably burdensome." Ultimately, the requestor obtained additional records related to the incident from KSP, and resubmitted a more detailed request to Taylorsville. The city denied having any additional responsive records but specifically did not make any response to one particular part of the request.

The Decision agreed that a party was obligated to respond to each part of a multi-part request and referred it back to the City of Taylorsville to comply.

16-ORD-051 Lawrence Trageser/City of Taylorsville
Decided March 29, 2016

Trageser requested records, including any log or register, which reflects all Open Records requests made to the city during a specific time frame. The City responded that no such register existed. Trageser responded that the KDLA provides for a five year retention period for such registers, to which the city responded that there was no requirement, however, that they actually have created the record in the first place. Trageser responded that in lieu of such a register, the compilation of all such requests, with the responses, constitute the register.
The Decision disagreed, however, finding that instead, such items would be considered correspondence. Trageser could, however, make a request for all such correspondence. It agreed that there was no law that required the creation of such a register.

16-ORD-068 Eric Lyvers/Kentucky State Police
Decided April 5, 2016

Lyvers made specific requests for information concerning a particular matter, rather than requests for documents. KSP responded it was not required to respond to such requests. Lyvers appealed and the Decision upheld the response by KSP.

16-ORD-073 In re: Doy Beasley/Butler County Jailer
Decided April 14, 2016

Beasley, an inmate, requested documents concerning himself from the Bullitt County Jailer. He received no response and appealed. Belatedly, Bullitt County responded and noted that the records were available and would be produced upon payment of the reasonable, stated fee. The Decision noted the response was proper but delayed, and that the failure to respond did not put the requestor on notice that the records were available and ready to be picked up by a family member.

16-ORD-081 In re: Helena Ball/Carroll County Sheriff's Office
Decided April 27, 2016

Ball requested a number of document from the Carroll County Sheriff's Office, and received no request. Another requestor followed up with an almost identical request. Both appealed when they received no written response, although apparently they had an in-person meeting with the Sheriff about it. Although there was conflict as to what had been produced, and to whom, the County Attorney indicated that some of the items requested did not exist at all. The Decision could not resolve factual dispute, but agreed that the response was untimely, but sufficient, ultimately.

16-ORD-084 In re: Ameer Mabjish/Kentucky State Police
Decided May 3, 2016

Mabjish requested case file and laboratory data related to a particular investigation. KSP responded that the investigation was ongoing with the local agency (Covington PD) and could not be released. Mabjish appealed, arguing that there was no indication of the type of harm to the investigation that might occur if the records were disclosed. KSP responded that records should be sought through discover, rather than the ORA, but the Decision noted that such records are independent of normal discovery processes. As such, KSP was obligated to specify the harm that might be caused by release of the laboratory reports requested.

16-ORD-085 In re: Cincinnati Enquirer / City of Independence.
Decided May 3, 2016

The Cincinnati Enquirer requested a particularly incident report for a particularly case. They received a response that indicated that since the case was still under investigation, only the press release (which was provided) could be produced. The newspaper appealed, arguing that the city "did not articulate with proper specificity its basis for withholding the entire incident report under KRS 17.150(2)(d)." The Decision agreed that police incident reports are not automatically exempt from disclosure, and that denial requires a specific and detailed justification.

16-ORD-086 In re: James Hightower/Kentucky State Police
Decided May 3, 2016

Hightower, an inmate, requested copies of records related to an investigation of an assault in which he was the victim. KSP did not respond to the request and he appealed. KSP indicated it did respond, and had provided the initial KyIBRS report, but denying the remainder. (Hightower indicated he did not receive the respond under two weeks after he had filed the response.) The Decision could not resolve the factual dispute as to whether KSP did respond, but noted that ""the law enforcement exemption is appropriately invoked only when the agency can articulate a factual basis for applying it, only, that is, when, because of the record's content, its release poses a concrete risk of harm to the agency in the prospective action." In its response, KSP "did not make any reference to the harm caused by the release of the records either in its response to the request or to the appeal." As such, KSP's response was deficient and "in failing to justify the refusal with specificity, KSP violated the Open Records Act."

16-ORD-087 In re: Mike Burns/Kentucky State Police
Decided May 3, 2016

Aguiar (an attorney) requested information on a particularly auto accident, including the police report for reference. KSP denied the request, on the grounds that the information was part of an open investigation. Upon appeal, the KSP argued that the case was still under consideration

for criminal prosecution. The Decision agreed that ""the law enforcement exemption is appropriately invoked only when the agency can articulate a factual basis for applying it, only, that is, when, because of the record's content, its release poses a concrete risk of harm to the agency in the prospective action." Although it did not do so in the initial response, it did so in the response to the appeal.

16-ORD-088 In re: Cincinnati Enquirer/Kentucky State Police
Decided May 3, 2016

The Enquirer submitted a request related to an officer-involved shooting, KSP did not respond. Another request, made to a different KSP employee, three weeks later, was almost identical, and the response denied most of the documents as being part of an ongoing investigation. It did release the KyIBRS report, partially redacted. It appealed the denial, and the initial non-response, and noted in particularly that the dispatch records in particular were subject to release. KSP argued the first response was directed to the wrong employee and by email, to which it does not respond. It reiterated the denial. The Decision noted it would be more advisable to notify the requestor that it does not accept emailed requests, it did not violate the ORA. With respect to the substantive request, the KSP did not initially justify the disclosure, but it cured that on appeal. It also noted that 911 recordings could not be categorically refused, but only specifically excluded, it was unclear if the 911 recordings in this matter were in fact exempt. The dispatch information to a specific address, also requested, were not exempt and should have been released.

16-ORD-093 In re: Lawrence Trageser/Spencer County Sheriff's Department
Decided May 17, 2016

Trageser requested all records related to the initial identification cards provided to all employees and special deputies of the agency, those made by a particular piece of equipment. The agency responded that the items could be reviewed, but that they consisted of only a few items. On followup, it noted that when a new card is created, it erases the prior information. (It had several templates and could only provide the last one created on each.) Trageser argued that the inability to produce the records violated records management guidelines, but it was confirmed there was no retention schedule for such items. It agreed that such items were public records and that there should be a retention schedule. It did not mean that such records "can be destroyed at will." "In a line of open records decisions, this office has determined that unscheduled records must be retained by the agency until scheduled by the Archives and Records Commission and their retention period fixed by law." The matter was referred to the Department of Libraries and Archives for followup.

16-ORD-094 In re: Tyler Fryman/City of Danville
Decided May 17, 2016

Fryman requested nonexempt records from a named officer's personnel file, including disciplinary records. The city responded timely, stating it needed additional time to locate and

redact from the records, and gave a date of approximately two weeks in the future. It provided access to the records by that date but denied some records as preliminary and exempt. Fryman appealed, arguing that the delay was improper and that certain supporting documentation was not exempt. In response, the city corrected some of its characterizations but noted that some of the requested material involves juveniles. The AG requested in camera review and affirmed most of the denials, but agreed that there was an insufficient basis to delay the access as long as it did. It noted that the city "did not demonstrate that the request implicated voluminous records, a challenging retrieval process, or that the redaction challenges presented exceeded standard redaction challenges contemplated by KRS 61.878(4)." Further, it did not properly identify the issue with the juveniles until after the initial response. It did agree, however, that it was properly withheld, as it was a video that would serve as an education records that could not be segregated and redacted.

IT agreed that most of the personal information could be redacted, with the exception being the year of the officer's birth, which would serve to confirm that he "satisfies the age requirement for certification found at KRS 15.382(2))." It further noted that other items redacted were improper, as any relevant to job qualifications was proper.

16-ORD-098 In re: Sarah Teague/City of Henderson
Decided May 17, 2016

Teague requested personnel records on five former police officers. Initially, the response was that the request needed to be more specific and that with employment applications, the officers would be given a month to get the advice of counsel before release. After that time, four of the records were released and the last, it was indicated, was that the officer would challenge the release. Six months later, in followup, Teague asked about the status of that challenge, and learned the officer had taken no further action, and the City forwarded the file. Teague appealed the delay and the demand for greater specificity in the original request, noting that as a civilian, she would not know specifically what type of records might be available. The Decision agreed that although the officers were properly given the chance to object, that did not relieve the City of the obligation to fulfill the request absent such a challenge. Further, there was no requirement that Teague be more specific and it was not proper to deny an entire file do to its inclusion of some private material. It agreed the "intent of the Open Records Act was subverted, short of a denial of inspection, within the meaning of KRS 61.880(4)."

16-ORD-106 In re: Lawrence Trageser/Kentucky State Police
Decided May 27, 2016

Trageser requested several records, including the personnel file of a retired trooper. KSP denied the request based on KRS 61.878(1)(j) as internal affairs records are preliminary in nature. In followup, KSP noted that it did not suggest that none of the IA records could be produced but that the portions that were preliminary would not be. The Decision agreed that only those portions of the file that were relied upon by the final decision maker could be released and that "given the lack of information provided regarding the specific records withheld from

disclosure," it requested in camera review. KSP complied and even located a second IA investigation file which was also provided. Followup clarified the meaning of some of the documents in the file, but ultimately The Decision disagreed with KSP that all records but for the initiating complaint and the final disposition would be withheld, as it was clear that the Commissioner did agreed with the final determination of substantiated, which indicates that the investigations were, in fact, ultimately adopted by the decision maker and "therefore forfeited their preliminary characterization." Only those records not relied upon could be withheld.

16-ORD-108 **In re: Joseph Simpson/Kentucky State Police**
Decided June 3, 2016

Simpson, an inmate, requested disciplinary records for a third party. He was denied those records before, but did not appeal for some four months, in violation to KRS 197.025(3) which requires that inmates must appeal denials in 20 days. The Decision noted that a subsequent request for the same records does not revive the appeal rights.

16-ORD-111 **In re: Maggie McDowell/Laurel County Animal Shelter and Laurel County Sheriff's Department**
Decided June 7, 2016

McDowell requested specific public records related to named individuals involved in animal rescue, specifically surrender records and such. It was denied as part of an ongoing criminal investigation and the request was referred to the county attorney. Followup requests received apparently no response at all. Following an appeal, the Sheriff's office indicated it had no records as it did not work the actual case, to which McDowell stated she initiated an animal cruelty report with the Sheriff's Office on the matter and that a deputy had been dispatched. The Sheriff's Office noted that 911 calls were handled by a different agency and that had no responsive records. In a followup, the AG learned that there were old records (2013) which were provided, some records requested were with the county attorney and the KSP actually handled the criminal investigation. The Decision indicated that both agencies failed to adequately search their records for responsive materials and that its initial response was untimely. The Decision noted that the records ultimately discovered suggested the initial search was inadequate. Further, there was no indication that anyone asked the dispatched deputy if he did, in fact, generate any notes or similar documents related to the matter, nor was there any indication of potential harm in releasing the requested documents. The Decision set out several actions that the agencies involved were required to do, and absent that, its mandate to release the requested documents.

16-ORD-116 **In re: Al Nesteruk/City of Goshen**
Decided June 8, 2016

Nesteruk requested the rules and regulations posted by the City with respect to open records. The city had responded with that information which, the Decision agrees were in compliance,

except that it did not identify the city's principal office. (It noted that the custodian was property indicated as the city clerk, but it would be advisable to indicate that individual's name as well.) It found deficient however, the city's lack of response to Nesteruk's complaint that the rules were not property posted however, and they did not directly provide them to him either.

16-ORD-118 In re: Linda Duncan/Harlan Police Department
Decided June 8, 2016

Duncan requested police reports and similar records relating to contacts between her deceased aunt and the department for two years. She received no response. She submitted a second request and again, received no response. She appealed and the agency indicated it had not received either request. It further provided several items responsive to the request in the appeal, but indicated it was withholding a CIT report until further requested by the OAG. When the OAG requested more information as to why it would be considered confidential, it received no response. The Decision noted that if it did not get the request, certainly it couldn't be faulted for not responding, but that agencies were advised to ensure that they fully check to ensure that mail is being property handled. By its failure to respond to the request about the CIT report, it effectively defaulted and as such, should have released the records as well.

16-ORD-119 In re: Justin Barker/City of Newport
Decided June 10, 2016

Barker requested parking tickets issued by a particular officer on a particular date, and time records for the officer for that same date. The requester indicated he tried to deliver the request in person and was turned away. The City denied that it had done so, and the appeal did not indicate any specifics. The City further indicated it had received a second request and had provided the tickets, but had denied the time cards has something that did not exist. (It did not discuss how time was in fact recorded.) The Decision found the request sufficient.

16-ORD- 095/120/121 In re: Jason McGee/Kentucky State Police
Decided June 10, 2016 (latest date)

McGee requested recorded related to approved traffic checkpoints in Ohio County on a specific date. The initial response from KSP was belated, and thus improper, and that its denial was insufficient – as it simply stated the matter was related to an action pending in court. The Decision noted that it was improper to withhold information simply because there was a criminal action pending. When the Decision in 095 was relayed to KSP, it provided the requested records, redacting only proper personal information and NCIC information. The Decision agreed the categorical removal of such personal information was proper and that centralized criminal history records were also exempt, the latter under 17.150(4).

16-ORD-122 In re: Corbin News Journal/London-Laurel County 911 Center
Decided June 10, 2016

Manning (Corbin News Journal) requested a copy of a 911 call and followup communications regarded a particular incident. The 911 office contacted the Laurel County Sheriff's Office for permission to release the document, and was instructed not to do so as it was still an open investigation. The 911 denied the request and Manning appealed. However, the 911 Center did not respond to the OAG. The Decision indicated that the response was insufficient and lacked specificity, as the denial did not explain how release the 911 call and related materials would, in fact, impact or harm the investigation. As such, the denial was improper.

16-ORD-127 In re: Lawrence Trageser/City of Taylorsville
Decided June 24, 2016

Trageser requested the personnel file of a named officer and documents relating to the purchase of shotguns for the police department. He was informed that the latter record was available to review but that the personnel file needed to be reviewed to by city attorney. It indicated that would be available in approximately two weeks. Trageser was informed that the record (with some redactions) was available three days earlier than it estimated, however. Trageser appealed. The City followed up, noting that the redacted information was personal information such as the Social Security number and the like. One item the City redacted was "document numbers," but it was unclear as to what that meant, and as such, was deficient in that respect. It noted that the initial delay was also unexplained.

16-ORD-136 In re: Crystal Emberton/Carroll County Jailer
Decided July 6, 2016

Emberton requested records (including video) of an incident that occurred in the lobby of the jail. The Jailer explained the video would cost $25 plus postage. It also noted that if the video was for court, that was fine, if it was for social media, the request was refused. Emberton appealed. The Decision noted that the law enforcement exemption could apply, but that it was not invoked. With respect to the purpose of the request, the Decision noted that was irrelevant and was not a basis to withhold the record.

16-ORD-143 In re: J. Clark Baird/Kentucky State Police
Decided July 25, 2016

Baird (an attorney) requested all records relating to his named client and a specific address. The KSP responded that the request lacked sufficient specificity, as it did not specify a time frame, or any other criteria for search. The Decision agreed that the request was too overbroad to allow for the agency to do an adequate search and upheld KSP's denial.

16-ORD-150 In re: Frederick Robb/Pike County Sheriff's Department
Decided July 25, 2016

Robb requested a particular case file in the possession of the Sheriff's Office, by its court case number. It responded that it did not maintain files that way and to inquire with the circuit court clerk. Upon appeal and followup, the Sheriff's Office indicated that it had determined that case had been investigated by KSP and that it had no records on it It could not share information from CourtNet, however. The Decision agreed its attempt to locate responsive records was appropriate.

16-ORD-156 In re: Ronald Ferrier/Kenton County Coroner
Decided July 25, 2016

Ferrier made a request for the complete coroner and ME records relating to the death of his daughter to the Coroner. (Her husband agreed to the release as well.) He received no response and appealed. Following that, the Kenton County Attorney provided a number of records to Ferrier, but denied having any biological evidence, which would be held by the ME. The response was correct, although belated.

16-ORD-162 In re: The Kentucky Standard/Nelson County Sheriff's Department
Decided August 3, 2016

The Kentucky Standard requested items related to a 2009 homicide. Initially the Sheriff agreed verbally to provide the information, but then, upon the request of the Commonwealth's Attorney, denied it. (The case was actually under investigation by the Bardstown PD and was still considered open.) Berkshire (for the Standard) appealed, advising that the only suspect had been no true billed at the time and that the sheriff's office considered it closed. Sheriff Mattingly elaborated, noting that suspect had himself been murdered and that case was under investigation by Bardstown PD, as the family of the initial victim had threatened the suspect. (It had been classified as a hunting accident.) Although not the "model of specificity," the Decision agreed that such situations are highly fact dependent. The request came only three days after the second death, when its investigation was just beginning. As such, exemption was appropriate.

16-ORD-169 In re: The State Journal/ City of Frankfort
Decided August 17, 2016

Bowman (The State Journal) requested emails between city officials, including the Police Chief, regarding Facebook and Twitter posts made by the Chief. The City denied the request, noting such emails are preliminary and in some case, subject to attorney-client privilege. Bowman appealed, and the City again argued preliminary. The OAG requested the emails to be reviewed in camera and reviewed them first for attorney-client privilege. It agreed that such records would be exempt if "all the elements of privilege are present." That requires: 1) relationship of

attorney and client; 2) communication by or to the client relating to the subject matter upon which professional advice is sought; and 3) the confidentiality of the expression for which the protection is claimed. Upon review, it confirmed that not all of the documents satisfied KRE 503(b). Exchanges in which counsel was not involved, for example, would not qualify.

Also, the preliminary argument becomes mood with the final action inquiry (under KRS 61.878(1)(i)), as none could be so characterized, nor were they subject to the "private correspondence" argument either, as all involved were public officials. As such, the items should be disclosed.

(There was also an argument that the appeal was untimely, but the Decision noted that there was no deadline on filing an appeal in such matters.)

16-ORD-177 In re: Insider Louisville/ Louisville Metro Police Department
Decided August 25, 2016

Kelley (Insider Louisville) requested "the firearms trace summary data provided to LMPD by the ATF for each homicide committed with a firearm in 2015 in which the weapon was recovered and such information was requested from the ATF." LMPD denied the report, noting that such items were considered "intelligence reports," and ""constitute 'antiterrorism protective measures' within the meaning of KRS 61.878[(1)(m)1." Upon appeal, LMPD expanded on its argument, noting that disclosure implicated federal law and that "The Consolidated and Further Continuing Appropriations Act of 2012, (PL 112-55) effective November 18, 2011, restricts the disclosure of any part of the contents of the Firearms Tracing System or any information required to be kept by the Federal Firearms Licensees pursuant to 18 USC 923(g), or required to be reported pursuant to 18 USC 923(g)(7)." As such, the Decision agreed it was exempt from disclosure under the federal law.

16-ORD-199 In re: Reverend Russell/Lakeside Park - Crestview Hills Police Authority
Decided September 7, 2016

Russell, of the National Investigative Report (NIR) requested arrest documents and all other documents related to a particular named individual. The agency denied the records pursuant to KRS 17.150, prospective enforcement action. The records had been handed over to the Kenton County Commonwealth's Attorney. At the time, there was an active prosecution. The Decision noted, however, that police reports are not generally subject to nondisclosure, as opposed to investigative files, and if it does so, it much provide specific information as to why it should be exempted. As such, the incident report, with redactions for such information as social security numbers and the like, was required. The remainder of the records, however, were exempt from disclosure as investigative records.

16-ORD-225 **In re: Marcus Green, WDRB/Kentucky State Police**
Decided October 17, 2016

Green (WDRB) requested records relating to KSP's acquisition and auction of weapons. It specified a preference for the information in an Excel spreadsheet, if possible. KSP provided the information, however, in the form of a PDF. Green appealed, stating the request should have been provided in the form he requested. The Decision noted that such a request does not comport which the statute, which precisely defines what a standard electronic format or standard hard copy format consisted of – and that an Excel spreadsheet would be a nonstandardized request. The Decision agreed the response was appropriate.

16-ORD-230 **In re: Sam Aguiar/Louisville Metro Police Department**
Decided November 1, 2016

Aguiar (an attorney) made an extensive and detailed request for documents relating to a recent officer-involved shooting. The agency responded fully to 3 of the requests, requested a short time extension for 18 of the requests and invoked non-disclosure under KRS 61.878(1)(h) and KRS 17.150(2) on 12. It also directed him to other custodians (in other agencies) for three requests. It did not respond to the last item, which requested personnel and investigative files on several officers. Aguiar followed up with requests for video, audio and body cam footage. LMPD then responded to the request for personnel records, denying the performance evaluations, however, citing 61.878(1)(a). Aguiar appealed the 12 records held back and LMPD's non-response to the last request, as well as its failure to respond to its own self-imposed extension date. LMPD responded that the requested "was the equivalent of at least 36 separate records requests which could implicate thousands of pages of records and hours of video that had to be identified, located and reviewed." The City noted that the records custodian had no reasonable basis on which to estimate how long that would actually take. In that response, dated September 30, it requested until October 31 to complete the response and detailed those items it was claiming exempted from disclosure. In a belated response, the Decision agreed that LMPD justified the exemption of the bulk of the records. It further agreed that the nondisclosure of the personnel records was also supported and that the release "would not significantly further the purpose of the Open Records Act and no overriding public interest has been shown that would override the recognized privacy interests."

Finally, the Decision addressed the delays in production. Although the request was onerous, only the latest response made "reference as to <u>why</u> record production was delayed, and that explanation is very general, not specific as required by KRS 61.872(5)." In some cases, the release was 74 days from the request and 42 days past the agency's own, self-imposed, deadline. The Decision emphasized the agency "should be guided in responding to future requests by the fundamental principle that the procedural requirements of the Open Records Act "are not mere formalities, but are an essential part of the prompt and orderly processing of an open records request."

16-ORD-236 In re: Christie Bluhm/Union County Sheriff's Office
Decided November 7, 2016

Bluhm requested a number of items from the Union County Sheriff's Office, couched in the form of a request for lists and questions, rather than requests for documents. The Sheriff responded 11 days later, denying any obligation to respond to such requests. The Decision agreed the response was untimely, but otherwise correct and that "Simply put, "what the public gets is what . [the public agency has] and in the format in which . . [the agency has] it." As such, the Sheriff's Office was not obligated to answer questions.

16-ORD-237 In re: Christie Bluhm/Kentucky State Police
Decided November 7, 2016

Bluhm made a number of requests, couched in the form of questions, relating to the testing of certain sexual assaults at a particular location. KSP denied the request for the most part, and also denied a request to create statistical data on the matter. The Decision agreed that the denial was correct and that "the Kentucky Open Records Act addresses requests for records, not requests for information."

16-ORD-244 In re: William Chesher/Kentucky State Police
Decided November 17, 2016

Chesher, an inmate, requested a number of items from the KSP, regarding the case for which he was incarcerated. KSP denied the request, noting that there was a "significant likelihood of further litigation" concerning his conviction. He appealed, arguing the items were not provided to his counsel during his trial. The Decision agreed that it was appropriate to deny in such circumstances.

16-ORD-246 In re: Sarah Teague/Kentucky State Police
Decided November 21, 2017

Teague requested records on a 911 call on a specific incident that occurred in 1995, recordings of chain of custody of evidence of that recording, the names of individuals present at a specified meeting and suspect mugshots. KSP denied having any responsive records on the last, and stated that the remaining items were part of an open and active criminal investigation. The Decision noted that KSP did not state that it had no mugshots in its investigative file, only its mugshot file, and questioned its continued reliance on the investigative exemption given the age of the case. The KSP also supported its denial with an affidavit from the Investigative Sergeant, who detailed several recent actions in the case, supporting its assertion that it is still an active case. The Court upheld the denial at this time.

16-ORD-265 **In re: Lawrence Trageser/Spencer County Sheriff**
Decided December 6, 2016

Trageser requested all records relating to a contract between the Sheriff and a named attorney. The Sheriff's Office denied any responsive documents.(The attorney was apparently representing the Sheriff's Office in a lawsuit concerning a public matter.) However, as the Decision could not resolve a factual matter, and there was no legal requirement for such an agreement to exist, the Sheriff's Office was not obligated to explain the claimed nonexistence of a record.

16-ORD-275 **In re: Luke Lawless/Kentucky State Police**
Decided December 21, 2016

Lawless requested 911 dispatch recordings for calls related to a particular matter. KSP denied the request as part of an open investigation. Lawless appealed and KSP responded, but did not cite KRS 61.878(1)(h) as a basis for non-disclosure, but instead 17.150(2)(d), which exempts from disclosure records to be used in prospective law enforcement action." Although minimal, the Decision agreed that the responses, together, by citing a pending criminal action, met the standard to deny the records at the current time.

KENTUCKY
Open Records Statutes

Updated through 2017

61.870 Definitions for KRS 61.872 to 61.884

(1) "Public agency" means:
(a) Every state or local government officer;
(b) Every state or local government department, division, bureau, board, commission, and authority;
(c) Every state or local legislative board, commission, committee, and officer;
(d) Every county and city governing body, council, school district board, special district board, and municipal corporation;
(e) Every state or local court or judicial agency;
(f) Every state or local government agency, including the policy-making board of an institution of education, created by or pursuant to state or local statute, executive order, ordinance, resolution, or other legislative act;
(g) Any body created by state or local authority in any branch of government;
(h) Any body which, within any fiscal year, derives at least twenty-five percent (25%) of its funds expended by it in the Commonwealth of Kentucky from state or local authority funds. However, any funds derived from a state or local authority in compensation for goods or services that are provided by a contract obtained through a public competitive procurement process shall not be included in the determination of whether a body is a public agency under this subsection;
(i) Any entity where the majority of its governing body is appointed by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (j), or (k) of this subsection; by a member or employee of such a public agency; or by any combination thereof;
(j) Any board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency, except for a committee of a hospital medical staff, established, created, and controlled by a public agency as defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (k) of this subsection; and
(k) Any interagency body of two (2) or more public agencies where each public agency is defined in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), or (j) of this subsection;
(2) "Public record" means all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency. "Public record" shall not include any records owned or maintained by or for a body referred to in subsection (1)(h) of this section that are not related to functions, activities, programs, or operations funded by state or local authority;
(3) (a) "Software" means the program code which makes a computer system function, but does not include that portion of the program code which contains public records exempted from inspection as provided by KRS 61.878 or specific addresses of files, passwords, access codes, user identifications, or any other mechanism for controlling the security or restricting access to public records in the public agency's computer system.
(b) "Software" consists of the operating system, application programs, procedures, routines, and subroutines such as translators and utility programs, but does not include that material which is prohibited from disclosure or copying by a license agreement between a public agency and an outside entity which supplied the material to the agency;
(4) (a) "Commercial purpose" means the direct or indirect use of any part of a public record or records, in any form, for sale, resale, solicitation, rent, or lease of a service, or any use by which the user expects a profit either through commission, salary, or fee.
(b) "Commercial purpose" shall not include:
1. Publication or related use of a public record by a newspaper or periodical;
2. Use of a public record by a radio or television station in its news or other informational programs; or
3. Use of a public record in the preparation for prosecution or defense of litigation, or claims settlement by the parties to such action, or the attorneys representing the parties;
(5) "Official custodian" means the chief administrative officer or any other officer or employee of a public agency who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control;
(6) "Custodian" means the official custodian or any authorized person having personal custody and control of public records;

(7) "Media" means the physical material in or on which records may be stored or represented, and which may include, but is not limited to paper, microform, disks, diskettes, optical disks, magnetic tapes, and cards;
(8) "Mechanical processing" means any operation or other procedure which is transacted on a machine, and which may include, but is not limited to a copier, computer, recorder or tape processor, or other automated device; and
(9) "Booking photograph and photographic record of inmate" means a photograph or image of an individual generated by law enforcement for identification purposes when the individual is booked into a detention facility as defined in KRS 520.010 or photograph and image of an inmate taken pursuant to KRS 196.099.
Effective: July 15, 2016

61.871 Policy of KRS 61.870 to 61.884; strict construction of exceptions of KRS 61.878

The General Assembly finds and declares that the basic policy of KRS 61.870 to 61.884 is that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.
Effective: July 14, 1992

61.8715 Legislative findings

The General Assembly finds an essential relationship between the intent of this chapter and that of KRS 171.410 to 171.740, dealing with the management of public records, and of KRS 11.501 to 11.517, 45.253, 171.420, 186A.040, 186A.285, and 194B.102, dealing with the coordination of strategic planning for computerized information systems in state government; and that to ensure the efficient administration of government and to provide accountability of government activities, public agencies are required to manage and maintain their records according to the requirements of these statutes. The General Assembly further recognizes that while all government agency records are public records for the purpose of their management, not all these records are required to be open to public access, as defined in this chapter, some being exempt under KRS 61.878.
Effective: June 25, 2009

61.872 Right to inspection; limitation

(1) All public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No person shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.
(2) Any person shall have the right to inspect public records. The official custodian may require written application, signed by the applicant and with his name printed legibly on the application, describing the records to be inspected. The application shall be hand delivered, mailed, or sent via facsimile to the public agency.
(3) A person may inspect the public records:
(a) During the regular office hours of the public agency; or
(b) By receiving copies of the public records from the public agency through the mail. The public agency shall mail copies of the public records to a person whose residence or principal place of business is outside the county in which the public records are located after he precisely describes the public records which are readily available within the public agency. If the person requesting the public records requests that copies of the records be mailed, the official custodian shall mail the copies upon receipt of all fees and the cost of mailing.
(4) If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records.
(5) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed three (3) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection.
(6) If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.
Effective: July 15, 1994

61.874 Abstracts, memoranda, copies; agency may prescribe fee; use of nonexempt public records for commercial purposes; online access

(1) Upon inspection, the applicant shall have the right to make abstracts of the public records and memoranda thereof, and to obtain copies of all public records not exempted by the terms of KRS 61.878. When copies are requested, the custodian may require a written request and advance payment of the prescribed fee, including postage where appropriate. If the applicant desires copies of public records other than written records, the custodian of the records shall duplicate the records or permit the applicant to duplicate the records; however, the custodian shall ensure that such duplication will not damage or alter the original records.

(2) (a) Nonexempt public records used for noncommercial purposes shall be available for copying in either standard electronic or standard hard copy format, as designated by the party requesting the records, where the agency currently maintains the records in electronic format. Nonexempt public records used for noncommercial purposes shall be copied in standard hard copy format where agencies currently maintain records in hard copy format. Agencies are not required to convert hard copy format records to electronic formats.

(b) The minimum standard format in paper form shall be defined as not less than 8 1/2 inches x 11 inches in at least one (1) color on white paper, or for electronic format, in a flat file electronic American Standard Code for Information Interchange (ASCII) format. If the public agency maintains electronic public records in a format other than ASCII, and this format conforms to the requestor's requirements, the public record may be provided in this alternate electronic format for standard fees as specified by the public agency. Any request for a public record in a form other than the forms described in this section shall be considered a nonstandardized request.

(3) The public agency may prescribe a reasonable fee for making copies of nonexempt public records requested for use for noncommercial purposes which shall not exceed the actual cost of reproduction, including the costs of the media and any mechanical processing cost incurred by the public agency, but not including the cost of staff required. If a public agency is asked to produce a record in a nonstandardized format, or to tailor the format to meet the request of an individual or a group, the public agency may at its discretion provide the requested format and recover staff costs as well as any actual costs incurred.

(4) (a) Unless an enactment of the General Assembly prohibits the disclosure of public records to persons who intend to use them for commercial purposes, if copies of nonexempt public records are requested for commercial purposes, the public agency may establish a reasonable fee.

(b) The public agency from which copies of nonexempt public records are requested for a commercial purpose may require a certified statement from the requestor stating the commercial purpose for which they shall be used, and may require the requestor to enter into a contract with the agency. The contract shall permit use of the public records for the stated commercial purpose for a specified fee.

(c) The fee provided for in subsection (a) of this section may be based on one or both of the following:

1. Cost to the public agency of media, mechanical processing, and staff required to produce a copy of the public record or records;

2. Cost to the public agency of the creation, purchase, or other acquisition of the public records.

(5) It shall be unlawful for a person to obtain a copy of any part of a public record for a:

(a) Commercial purpose, without stating the commercial purpose, if a certified statement from the requestor was required by the public agency pursuant to subsection (4)(b) of this section; or

(b) Commercial purpose, if the person uses or knowingly allows the use of the public record for a different commercial purpose; or

(c) Noncommercial purpose, if the person uses or knowingly allows the use of the public record for a commercial purpose. A newspaper, periodical, radio or television station shall not be held to have used or knowingly allowed the use of the public record for a commercial purpose merely because of its publication or broadcast, unless it has also given its express permission for that commercial use.

(6) Online access to public records in electronic form, as provided under this section, may be provided and made available at the discretion of the public agency. If a party wishes to access public records by electronic means and the public agency agrees to provide online access, a public agency may require that the party enter into a contract, license, or other agreement with the agency, and may charge fees for these agreements. Fees shall not exceed:

(a) The cost of physical connection to the system and reasonable cost of computer time access charges; and

(b) If the records are requested for a commercial purpose, a reasonable fee based on the factors set forth in subsection (4) of this section.
Effective: July 15, 1994

61.8745 Damages recoverable by public agency for person's misuse of public records
A person who violates subsections (2) to (6) of KRS 61.874 shall be liable to the public agency from which the public records were obtained for damages in the amount of:
(1) Three (3) times the amount that would have been charged for the public record if the actual commercial purpose for which it was obtained or used had been stated;
(2) Costs and reasonable attorney's fees; and
(3) Any other penalty established by law.
Effective: July 15, 1994

61.8746 Commercial use of booking photographs or official inmate photographs prohibited -- Conditions -- Right of action -- Damages.
(1) A person shall not utilize a booking photograph or a photograph of an inmate taken pursuant to KRS 196.099 originally obtained from a public agency for a commercial purpose if:
(a) The photograph will be placed in a publication or posted on a Web site; and
(b) Removal of the photograph from the publication or Web site requires the payment of a fee or other consideration.
(2) Any person who has requested the removal of a booking photograph or photo taken pursuant to KRS 196.099 of himself or herself:
(a) Which was subsequently placed in a publication or posted on a Web site; and
(b) Whose removal requires the payment of a fee or other consideration;
shall have a right of action in Circuit Court by injunction or other appropriate order and may also recover costs and reasonable attorney's fees.
(3) At the court's discretion, any person found to have violated this section in an action brought under subsection (2) of this section, may be liable for damages for each separate violation
violation, in an amount not less than:
(a) One hundred ($100) dollars a day for the first thirty (30) days;
(b) Two hundred and fifty ($250) dollars a day for the subsequent thirty (30) days; and
(c) Five hundred ($500) dollars a day for each day thereafter.
If a violation is continued for more than one (1) day, each day upon which the violation occurs or is continued shall be considered and constitute a separate violation.
Effective: July 15, 2016

61.876 Agency to adopt rules and regulations
(1) Each public agency shall adopt rules and regulations in conformity with the provisions of KRS 61.870 to 61.884 to provide full access to public records, to protect public records from damage and disorganization, to prevent excessive disruption of its essential functions, to provide assistance and information upon request and to insure efficient and timely action in response to application for inspection, and such rules and regulations shall include, but shall not be limited to:
(a) The principal office of the public agency and its regular office hours;
(b) The title and address of the official custodian of the public agency's records;
(c) The fees, to the extent authorized by KRS 61.874 or other statute, charged for copies;
(d) The procedures to be followed in requesting public records.
(2) Each public agency shall display a copy of its rules and regulations pertaining to public records in a prominent location accessible to the public.
(3) The Finance and Administration Cabinet may promulgate uniform rules and regulations for all state administrative agencies.
History: Created 1976 Ky. Acts ch. 273, sec. 4.

61.878 Certain public records exempted from inspection except on order of court; restriction of state employees to inspect personnel files prohibited
(1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:
(a) Public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy;

(b) Records confidentially disclosed to an agency and compiled and maintained for scientific research. This exemption shall not, however, apply to records the disclosure or publication of which is directed by another statute;
(c) 1. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;
2. Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which are compiled and maintained:
a. In conjunction with an application for or the administration of a loan or grant;
b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in KRS Chapter 154;
c. In conjunction with the regulation of commercial enterprise, including mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person; or
d. For the grant or review of a license to do business.
3. The exemptions provided for in subparagraphs 1. and 2. of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute;
(d) Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within or expanding within the Commonwealth. This exemption shall not include those records pertaining to application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except as provided in paragraph (c) of this subsection;
(e) Public records which are developed by an agency in conjunction with the regulation or supervision of financial institutions, including but not limited to, banks, savings and loan associations, and credit unions, which disclose the agency's internal examining or audit criteria and related analytical methods;
(f) The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative to acquisition of property, until such time as all of the property has been acquired. The law of eminent domain shall not be affected by this provision;
(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the exam is given or if it is to be given again;
(h) Records of law enforcement agencies or agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication. Unless exempted by other provisions of KRS 61.870 to 61.884, public records exempted under this provision shall be open after enforcement action is completed or a decision is made to take no action; however, records or information compiled and maintained by county attorneys or Commonwealth's attorneys pertaining to criminal investigations or criminal litigation shall be exempted from the provisions of KRS 61.870 to 61.884 and shall remain exempted after enforcement action, including litigation, is completed or a decision is made to take no action. The exemptions provided by this subsection shall not be used by the custodian of the records to delay or impede the exercise of rights granted by KRS 61.870 to 61.884;
(i) Preliminary drafts, notes, correspondence with private individuals, other than correspondence which is intended to give notice of final action of a public agency;
(j) Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;
(k) All public records or information the disclosure of which is prohibited by federal law or regulation;
(l) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly;
(m) 1. Public records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to:

a. Criticality lists resulting from consequence assessments;

b. Vulnerability assessments;
c. Antiterrorism protective measures and plans;
d. Counterterrorism measures and plans;
e. Security and response needs assessments;
f. Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems;
g. The following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency; and
h. Records when their disclosure will expose a vulnerability referred to in this subparagraph and that describe the exact physical location of hazardous chemical, radiological, or biological materials.
2. As used in this paragraph, "terrorist act" means a criminal act intended to:
a. Intimidate or coerce a public agency or all or part of the civilian population;
b. Disrupt a system identified in subparagraph 1.f. of this paragraph; or
c. Cause massive destruction to a building or facility owned, occupied, leased, or maintained by a public agency.
3. On the same day that a public agency denies a request to inspect a public record for a reason identified in this paragraph, that public agency shall forward a copy of the written denial of the request, referred to in KRS 61.880(1), to the executive director of the Kentucky Office of Homeland Security and the Attorney General.
4. Nothing in this paragraph shall affect the obligations of a public agency with respect to disclosure and availability of public records under state environmental, health, and safety programs.
5. The exemption established in this paragraph shall not apply when a member of the Kentucky General Assembly seeks to inspect a public record identified in this paragraph under the Open Records Law; and
(n) Public or private records, including books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, having historic, literary, artistic, or commemorative value accepted by the archivist of a public university, museum, or government depository from a donor or depositor other than a public agency. This exemption shall apply to the extent that nondisclosure is requested in writing by the donor or depositor of such records, but shall not apply to records the disclosure or publication of which is mandated by another statute or by federal law.
(2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.
(3) No exemption in this section shall be construed to deny, abridge, or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him. The records shall include, but not be limited to, work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, lay-offs, disciplinary actions, examination scores, and preliminary and other supporting documentation. A public agency employee, including university employees, applicant, or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.
(4) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.
(5) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.
Effective: June 25, 2013

61.880 Denial of inspection; role of Attorney General

(1) If a person enforces KRS 61.870 to 61.884 pursuant to this section, he shall begin enforcement under this subsection before proceeding to enforcement under subsection (2) of this section. Each public agency, upon any request for records made under KRS 61.870 to 61.884, shall determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request,

within the three (3) day period, of its decision. An agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld. The response shall be issued by the official custodian or under his authority, and it shall constitute final agency action.

(2) (a) If a complaining party wishes the Attorney General to review a public agency's denial of a request to inspect a public record, the complaining party shall forward to the Attorney General a copy of the written request and a copy of the written response denying inspection. If the public agency refuses to provide a written response, a complaining party shall provide a copy of the written request. The Attorney General shall review the request and denial and issue within twenty (20) days, excepting Saturdays, Sundays and legal holidays, a written decision stating whether the agency violated provisions of KRS 61.870 to 61.884.

(b) In unusual circumstances, the Attorney General may extend the twenty (20) day time limit by sending written notice to the complaining party and a copy to the denying agency, setting forth the reasons for the extension, and the day on which a decision is expected to be issued, which shall not exceed an additional thirty (30) work days, excepting Saturdays, Sundays, and legal holidays. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper resolution of an appeal:

1. The need to obtain additional documentation from the agency or a copy of the records involved;
2. The need to conduct extensive research on issues of first impression; or
3. An unmanageable increase in the number of appeals received by the Attorney General.

(c) On the day that the Attorney General renders his decision, he shall mail a copy to the agency and a copy to the person who requested the record in question. The burden of proof in sustaining the action shall rest with the agency, and the Attorney General may request additional documentation from the agency for substantiation. The Attorney General may also request a copy of the records involved but they shall not be disclosed.

(3) Each agency shall notify the Attorney General of any actions filed against that agency in Circuit Court regarding the enforcement of KRS 61.870 to 61.884. The Attorney General shall not, however, be named as a party in any Circuit Court actions regarding the enforcement of KRS 61.870 to 61.884, nor shall he have any duty to defend his decision in Circuit Court or any subsequent proceedings.

(4) If a person feels the intent of KRS 61.870 to 61.884 is being subverted by an agency short of denial of inspection, including but not limited to the imposition of excessive fees or the misdirection of the applicant, the person may complain in writing to the Attorney General, and the complaint shall be subject to the same adjudicatory process as if the record had been denied.

(5) (a) A party shall have thirty (30) days from the day that the Attorney General renders his decision to appeal the decision. An appeal within the thirty (30) day time limit shall be treated as if it were an action brought under KRS 61.882.

(b) If an appeal is not filed within the thirty (30) day time limit, the Attorney General's decision shall have the force and effect of law and shall be enforceable in the Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained.

Effective: July 15, 1994

61.882 Jurisdiction of Circuit Court in action seeking right of inspection; burden of proof; costs; attorney fees

(1) The Circuit Court of the county where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained shall have jurisdiction to enforce the provisions of KRS 61.870 to 61.884, by injunction or other appropriate order on application of any person.

(2) A person alleging a violation of the provisions of KRS 61.870 to 61.884 shall not have to exhaust his remedies under KRS 61.880 before filing suit in a Circuit Court.

(3) In an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the court shall determine the matter de novo. In an original action or an appeal of an Attorney General's decision, where the appeal is properly filed pursuant to KRS 61.880(5)(a), the burden of proof shall be on the public agency. The court on its own motion, or on motion of either of the parties, may view the records in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.

(4) Except as otherwise provided by law or rule of court, proceedings arising under this section take

precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date.

(5) Any person who prevails against any agency in any action in the courts regarding a violation of KRS 61.870 to 61.884 may, upon a finding that the records were willfully withheld in violation of KRS 61.870 to 61.884, be awarded costs, including reasonable attorney's fees, incurred in connection with the legal action. If such person prevails in part, the court may in its discretion award him costs or an appropriate portion thereof. In addition, it shall be within the discretion of the court to award the , subject to the provisions of KRS 61.878.

History: Created 1976 Ky. Acts ch. 273, sec. 8.

person an amount not to exceed twenty-five dollars ($25) for each day that he was denied the right to inspect or copy said public record. Attorney's fees, costs, and awards under this subsection shall be paid by the agency that the court determines is responsible for the violation.

Effective: July 14, 1992

61.884 Person's access to record relating to him

Any person shall have access to any public record relating to him or in which he is mentioned by name, upon presentation of appropriate identification